

A **KESATUAN PEKERJA-PEKERJA PERUSAHAAN LOGAM
v. GEORGE KENT (MALAYSIA) BHD & ANOR**

COURT OF APPEAL, PUTRAJAYA
RAVINTHRAN PARAMAGURU JCA
WONG KIAN KHEONG JCA
B FAIZAH JAMALUDIN JCA
[CIVIL APPEAL NO: W-01(A)-49-01-2022]
5 NOVEMBER 2025

C **Abstract** – *The court will decline to exercise its discretion to grant relief in judicial review proceedings where the underlying dispute has become academic due to subsequent agreements between the parties as the resulting decision would have no practical effect on the current legal relationship of the parties or would be rendered obsolete. In the context of industrial relations, if parties execute subsequent collective agreements that adopt the contested terms of a prior award, a challenge to that award becomes spent.*

E **ADMINISTRATIVE LAW:** *Judicial review – Appeal – Challenge against decision of Industrial Court – Certiorari and mandamus – Trade dispute regarding terms of 13th collective agreement ('CA') – Terms regarding salary increments, performance-linked wage systems and bonuses – Subsequent conclusion of 14th and 15th CAs incorporated disputed matters – Effect of subsequent agreements on pending judicial review – Whether relief should be granted where dispute overtaken by subsequent events – Whether application rendered academic and devoid of practical utility – Rules of Court 2012, O. 53 r. 2(3)*

G **LABOUR LAW:** *Industrial Court – Trade dispute – Trade dispute regarding terms of 13th collective agreement ('CA') – Terms regarding salary increments, performance-linked wage systems and bonuses – Subsequent conclusion of 14th and 15th CAs incorporated disputed matters – Effect of subsequent agreements on pending judicial review*

H There was a trade dispute between the appellant, a trade union, and the first respondent, a company, regarding certain terms and conditions of employment of the first respondent's employees to be incorporated into the 13th collective agreement ('CA') ('13th CA'). The trade dispute was referred to the Industrial Court. The Industrial Court, in its award decided that:
I (i) there would be no 'automatic' increase of RM300 in all the maximum rates in the salary scale of the first respondent's salary; (ii) there would be 3% annual salary increment for the first three years of employment and after the first three years of employment, the employee will only receive a 'monthly incentive' which would depend on: (a) if the employee is an 'office worker', the amount of monthly incentive depends on the employee's performance; and (b) if the employee is a 'production worker', the amount

of monthly incentive depends on the employee's performance and the first respondent's 'production level'; (iii) there should be a 6% salary adjustment for the first respondent's employees; and (iv) there would be a fixed bonus of one month and any other bonus exceeding the one-month fixed bonus should be earned through the 'performance linked wage system' ('four matters'). Aggrieved, the appellant applied for judicial review at the High Court, for orders of: (i) *certiorari* to quash the four matters; and (ii) *mandamus* to direct the Industrial Court to decide on the four matters. The High Court dismissed the application. Hence, the present appeal.

Held (dismissing appeal)

Per Wong Kian Kheong JCA delivering the judgment of the court:

- (1) Notwithstanding the trade dispute regarding the 13th CA and the present appeal, the appellant and the first respondent had subsequently entered into the 14th and 15th CAs. The 14th and 15th CAs had included all the four matters raised by the appellant with regard to the 13th CA. If the court allowed the appeal and remitted the four matters to be re-heard in the Industrial Court and the four matters are decided in the remitted hearing, the Industrial Court's second award could only have limited effect from 1 April 2017 to 31 March 2020. As from 1 April 2020 to 31 March 2026, the 14th and 15th CAs would apply. Therefore, the present appeal had been overtaken by the conclusion of the 14th and 15th CAs. The court declined to exercise its discretion under O. 53 r. 2(3) of the Rules of Court 2012 to grant the orders of *certiorari* and *mandamus*. (para 13)

Case(s) referred to:

- Association Of Bank Officers, Peninsular Malaysia v. Malayan Commercial Banks Association* [1981] 1 ILR 136 (*refd*)
- Hoh Kiang Ngan v. Mahkamah Perusahaan Malaysia & Anor* [1996] 4 CLJ 687 FC (*refd*)
- Kesatuan Eksekutif Airod v. Airod Sdn Bhd & Anor* [2016] CLJU 888; [2016] 1 LNS 888 HC (*refd*)
- Kesatuan Pekerja-pekerja Perkilangan Perusahaan Makanan v. Nestle Manufacturing Malaysia Sdn Bhd* [2008] ILRU 0045; [2008] 2 LNS 0045 (*refd*)
- Kesatuan Pekerja-pekerja Polyplastics Asia Pacific Sdn Bhd v. Polyplastics Asia Pacific Sdn Bhd* [2016] 2 ILR 159 (*refd*)
- Kuala Lumpur Glass Manufactures Co Sdn Bhd v. Non-Metallic Mineral Products Manufacturing Employees' Union* [1988] 2 ILR 93 (*refd*)
- Malayan Agricultural Producers' Association v. National Union Of Plantation Workers* [1968-1969] MLLR 34 (*refd*)
- Malayan Commercial Banks Association v. National Union Of Bank Employees* [1982] 1 ILR 246 (*refd*)
- Marlin Rajiman & Ors v. MAA Services Sdn Bhd* [1994] 2 CLJ 591 SC (*refd*)
- Non-Metallic Mineral Products Manufacturing Employees' Union v. Malaya Glass Factory Bhd* [1984] 2 CLJ 9; [1984] 1 CLJ (Rep) 305 FC (*refd*)

- A** *Palm Beach Hotel (Penang) Bhd v. National Union Of Hotel, Bar & Restaurant Workers [1988] 1 ILR 122 (refd)*
Penfibre Sdn Bhd, Penang v. Penang & S Prai Textile And Garment Industries Employees' Union [1986] 1 ILR 323 (refd)
R (On The Application Of Meritgold Ltd) v. London Borough Of Barnet [2004] EWHC 248 (Admin) (refd)
- B** *Ranjit Kaur S Gopal Singh v. Hotel Excelsior (M) Sdn Bhd [2010] 8 CLJ 629 FC (refd)*
Tri-Wall (Malaysia) Sdn Bhd v. Paper Products Manufacturing Employees' Union & Anor (R2-115-2011) (Unreported) (refd)

Legislation referred to:

- C** Industrial Relations Act 1967, ss. 13(2A)(a), (b), (c), 17(2), 20(3), 26(1), 30(4), (5), (5A), (6)
 National Wages Consultative Council Act 2011, s. 21(b)
 Rules of Court 2012, O. 53 r. 2(3)
- For the appellant - R Chandrasegaran, V K Raj & S P Devi Sangaran; M/s A Rajadurai P Kuppusamy & Co*
- D** *For the 1st respondent - Rutheran Sivagnanam & Chong Yi Zhen; M/s R Sivagnanam & Assocs*
- [Editor's note: For the High Court judgment, please see Kesatuan Pekerja-pekerja Perusahaan Logam v. George Kent (Malaysia) Bhd & Anor [2023] CLJU 106; [2023] 1 LNS 106 (affirmed).]*
- E** *Reported by Najib Tamby*

JUDGMENT

Wong Kian Kheong JCA:

Background

- F** **[1]** The appellant (appellant) is a trade union which is registered under the Trade Union Act 1959.
- G** **[2]** There was a trade dispute (trade dispute) between the appellant and the first respondent company (first respondent) regarding certain terms and conditions of employment of the first respondent's employees to be incorporated into the 13th collective agreement (13th CA). The 13th CA was supposed to take effect from 1 April 2017 to 31 March 2020.
- H** **[3]** The trade dispute was referred by the Minister of Human Resources to a three-member panel of the Industrial Court (IC) pursuant to s. 26(1) of the Industrial Relations Act 1967 (IRA). The three-member panel of the IC consisted of a Chairman of the IC (Chairman), one representative from the employees' panel (employees' representative) and one representative from the employers' panel (employers' representative).

I

Proceedings In The IC**A**

[4] The IC's award (award) was made after the IC had conducted a hearing and received evidence from witnesses called by both the appellant and the first respondent (evidence (IC)).

[5] The appellant took exception to the following four matters decided in the award (four matters):

B

(i) according to the unanimous decision of the three-member panel of the IC (unanimous IC's decision (no increase in maximum rates)), there would be no "automatic" increase of RM300 in all the maximum rates in the salary scale of the first respondent's employees (maximum rates);

C

(ii) a majority of the IC, namely, the Chairman and the employer's representative (majority IC's decision (annual salary increment)), accepted the following proposal by the first respondent regarding annual salary increment (first respondent's proposal (annual salary increment)):

D

(a) 3% annual salary increment for the first three years of employment (first three years (employment)); and

(b) after the first three years (employment), the employee will only receive a "monthly incentive" which will depend on:

E

(1) if the employee is an "office worker", the amount of monthly incentive depends on the employee's performance; and

(2) if the employee is a "production worker", the amount of monthly incentive depends on the employee's performance and the first respondent's "production level".

F

The employees' representative offered a dissenting decision (dissenting opinion of employees' representative (annual salary increment)) which accepted the appellant's proposal of a 6% annual salary increment (appellant's proposed 6% increase (annual salary increment));

(iii) a unanimous decision of the three-member panel of the IC decided that there should be a 6% salary adjustment for the first respondent's employees (unanimous IC's decision of 6% increase (salary adjustment)); and

G

(iv) a majority of the IC, namely, the Chairman and the employer's representative decided as follows regarding bonus (majority IC's decision (bonus)):

H

(a) there would be a fixed bonus of one month (one-month fixed bonus); and

(b) any other bonus exceeding the one-month fixed bonus, should be earned through the "performance linked wage system" (PLWS).

I

A Proceedings In The High Court

[6] The appellant filed a judicial review application (JRA) in the High Court for the following orders, among others:

(i) an order of *certiorari* to quash the four matters in the award; and

B (ii) a *mandamus* order to direct the IC to decide on the four matters.

[7] The High Court dismissed the JRA with costs of RM3,000 (High Court's decision).

C [8] The appellant lodged an appeal to the Court of Appeal against the High Court's decision (this appeal).

Issues

[9] The following questions arise in this appeal:

D (i) whether this appeal has been overtaken by the following two events (after the award):

(a) the appellant and the first respondent had entered into the 14th collective agreement (14th CA). The 14th CA was effective from 1 April 2020 to 31 March 2023; and

E (b) the 15th collective agreement (15th CA) was concluded by the appellant and the first respondent. The 15th CA has effect from 1 April 2023 to 31 March 2026;

(ii) whether there should be any appellate intervention regarding the High Court's refusal to allow the JRA in respect of the four matters.

F Our Decision

Grounds For Judicial Review

[10] It is not disputed that there are three grounds for judicial review, namely:

G (i) if:

(a) a provision of written law;

(b) an Executive policy, action and decision;

H (c) an administrative policy, action and decision; and

(d) a decision in disciplinary proceedings, including a decision to dismiss a public officer;

(referred collectively in this judgment as the "impugned matter")

I - is illegal;

- (ii) if there is procedural impropriety regarding an impugned matter; and
(iii) if an impugned matter is “irrational”.

In the Federal Court case of *Ranjit Kaur S Gopal Singh v. Hotel Excelsior (M) Sdn Bhd* [2010] 8 CLJ 629, at [15], Raus Sharif FCJ (as he then was) had decided as follows:

[15] ... *Historically, judicial review was only concerned with the decision-making process where the impugned decision is flawed on the ground of procedural impropriety. However, over the years, our courts have made inroad into this field of administrative law. Rama Chandran is the mother of all those cases. The Federal Court in a landmark decision has held that the decision of inferior tribunal may be reviewed on the grounds of “illegality”, “irrationality” and possibly “proportionality” which permits the courts to scrutinise the decision not only for process but also for substance. It allowed the courts to go into the merit of the matter. Thus, the distinction between review and appeal no longer holds.*

(emphasis added)

Ranjit Kaur had recognised the possibility of “disproportionality” as the fourth ground for judicial review.

[11] In a JRA, even if there is evidence to support any one or more of the four grounds for judicial review (four grounds (JR)), the court nonetheless has a discretion to grant or refuse to issue a prerogative order. This is clear from O. 53 r. 2(3) of the Rules of Court 2012 (RC) and the following Federal Court case:

- (i) a permissive term “may” is employed in O. 53 r. 2(3) of the RC. Reproduced below is O. 53 r. 2(3) of the RC:

Upon the hearing of an application for judicial review, the Court shall not be confined to the relief claimed by the applicant but may dismiss the application or make any orders, including an order of injunction or monetary compensation:

Provided that the power to grant an injunction shall be exercised in accordance with the provisions of section 29 of the Government Proceedings Act 1956 and section 54 of the Specific Relief Act 1950.

(emphasis added)

- (ii) in *Hoh Kiang Ngan v. Mahkamah Perusahaan Malaysia & Anor* [1996] 4 CLJ 687; [1995] 3 MLJ 369, at pp. 174 to 175 (CLJ); pp. 393 to 394 (MLJ), Gopal Sri Ram JCA (as he then was) delivered the following judgment of the Federal Court:

In any event, assuming for a moment that the Industrial Court had given wrong reasons for holding that the appellant is a workman within the Act – and we hasten to repeat that this is not the case here – its ultimate decision being correct, prerogative relief whether in the form of certiorari or prohibition ought to have been withheld from the respondent. For, it must not be forgotten

- A *that these remedies are discretionary and are not available ex debito justitiae to an applicant who is able to demonstrate an error of law on the part of a public decision – taker.*
- B *The true principle governing the grant of prerogative relief appears in the following passage in the judgment of Bose J in Sangram Singh v. Election Tribunal AIR 1955 SC 425 at p. 429:*
- C *That, however, is not to say that the jurisdiction will be exercised whenever there is an error of law. The High Courts do not, and should not, act as courts of appeal under Art 226. Their powers are purely discretionary and though no limits can be placed upon that discretion it must be exercised along recognized lines and not arbitrarily; and one of the limitations imposed by the courts on themselves is that they will not exercise jurisdiction in this class of case unless substantial injustice has ensued, or is likely to ensue. They will not allow themselves to be turned into courts of appeal or revision to set right mere errors of law which do not occasion injustice in a broad and general sense, for, though no legislature can impose limitations on these constitutional powers it is a sound exercise of discretion to bear in mind the policy of the legislature to have disputes about these special rights decided as speedily as may be. Therefore, writ petitions should not be lightly entertained in this class of case.*
- D *In Kewal Krishnan v. Minister for Local Bodies & Ors AIR 1959 J & K 17, the order of the Minister was challenged on the ground, inter alia, that the reasons contained in the order made by him contained wrong reasons for his decision. Wazir CJ, in refusing relief said (at p 19):*
- E *Although the reasons given in the order of the Minister may be erroneous yet if the order can be supported on other valid grounds, writ of certiorari to quash that order cannot be granted.*
- F *Suffice to say that in the circumstances of this case, the ultimate decision being correct, no injustice of any sort, whether substantial or inconsequential, has been occasioned because of the alleged wrong reasons.*
(emphasis added)
- G [12] With regard to an award of IC on a CA, the court may invoke the doctrine of severability and issue a prerogative order in respect of only a part of the award, which can be successfully challenged pursuant to any one or more of the four grounds (judicial review). This is clear from the following judgment of Wan Suleiman FJ in the Federal Court in *Non-Metallic Mineral Products Manufacturing Employees' Union v. Malaya Glass Factory Bhd* [1984] 2 CLJ 9; [1984] 1 CLJ (Rep) 305; [1985] 1 MLJ 129, pp. 307 to 309 (CLJ); at 130 and 131 to 132 (MLJ):
- H *It is also common ground that only 5 items or articles in the collective agreement before the Industrial Court are in dispute. Fourteen other items are not in dispute, and Encik Gangadharan, for appellant says that even if there had been excess or lack of jurisdiction as regards the five, the learned Judge should not have quashed the whole award. We shall in due course consider the doctrine of severability.*
- I

...

Jurisdiction to adjudicate on fourteen of the provisions of the collective agreement is conceded. We have held that three out of the five disputed ones are within jurisdiction. Encik Gangadharan says that the doctrine of severability may be invoked. That this Court can sever the good from the bad there is no doubt – (see pages 105/106 of the same edition of de Smith earlier mentioned). This principle was for instance applied in Bowman v. State and Stace Services Commission [1972]] NZLR 78 and Regina v. Arundel Justices Ex parte Jackson [1959] 2 WLR 798.

...

After careful consideration we are satisfied that this is an instance where we can properly interfere with the exercise of that discretion. The severance of the two articles – Article 6 – “Check off” and Article 15 – Accident leave” do not in our considered view, make what remains of the collective agreement unworkable.

We would therefore allow the appeal to the extent that the order of the High Court quashing the whole award of the Industrial Court handed down on June 30, 1978 be set aside, and instead, severing good from bad, we order that only the award in respect of Articles 6 and 15 be squashed.

(emphasis added)

Has This Appeal Been Overtaken By The Conclusion Of The 14th And 15th CA?

[13] Notwithstanding the trade dispute regarding the 13th CA and this appeal, the appellant and the first respondent had subsequently entered into the 14th and 15th CA. The 14th and 15th CA had included all the four matters raised by the appellant with regard to the 13th CA in this appeal.

If:

- (i) we have allowed this appeal and remitted these four matters to be reheard in the IC (remitted hearing (IC)); and
- (ii) these four matters are decided in the remitted hearing (IC), either for or against the appellant (or the first respondent) (IC’s second award), the IC’s second award could only have limited effect from 1 April 2017 to 31 March 2020. As from 1 April 2020 to 31 March 2026, the 14th and 15th CA would apply. It is therefore clear that this appeal has been overtaken by the conclusion of the 14th and 15th CA. On this ground alone, we will decline to exercise our discretion under O. 53 r. 2(3) of the RC to grant the orders of *certiorari* and *mandamus* in this case. In this regard, we refer to the following judgment of Sullivan J (as he then was) in the United Kingdom’s High Court case of *R (On The Application Of Meritgold Ltd) v. London Borough Of Barnet* [2004] EWHC 248 (Admin), at [13] and [14]:

[13] It is plain that the refusal to determine the 1999 application has long ago become academic. Whatever modifications were proposed to the fourth floor flat at that stage, they have been overtaken by the modifications that were proposed in 2001 and 2003. In 2001, for example, it was said that the various

A *modifications were put forward to address the criticisms made by the Inspector in 1998. The Inspector in 2002 accepted that there were some differences but concluded that they did not address the underlying concerns of the Inspector in 1998.*

B *[14] Thus, the claimants have had the opportunity, in simple language, to put their best foot forward, so far as making changes to the additional flat on the fourth floor is concerned, on at least two occasions since 1999. It would therefore be quite pointless to allow this challenge to proceed.*

(emphasis added)

C [14] Despite our decision in the above para. [13], we will express our view on whether there should be any appellate intervention in respect of the High Court's refusal to allow the JRA with regard to the four matters.

What Are The Considerations To Be Considered By The IC In Deciding A Trade Dispute Regarding A CA?

D [15] We reproduce below ss. 13(2A)(a) to (c), 17(2), 30(4), (5), (5A) and (6) of the IRA:

s. 13(2A) *A proposal for a collective agreement may provide for one or more of the following:*

- E (a) *provision for training to enhance skills and knowledge of the workmen;*
(b) *provision for an annual review of the wage system; and*
(c) *provision for a performance-based remuneration system.*

F s. 17(2) *As from such date and for such period as may be specified in the collective agreement it shall be an implied term of the contract between the workmen and employers bound by the agreement that the rates of wages to be paid and the conditions of employment to be observed under the contract shall be in accordance with the agreement unless varied by a subsequent agreement or a decision of the Court.*

G s. 30(4) *In making its award in respect of a trade dispute, the Court shall have regard to the public interest, the financial implications and the effect of the award on the economy of the country, and on the industry concerned, and also to the probable effect in related or similar industries.*

s. 30(5) *The Court shall act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal form.*

H s. 30(5A) *In making its award, the Court may take into consideration any agreement or code relating to employment practices between organisations representative of employers and workmen respectively where such agreement or code has been approved by the Minister.*

I s. 30(6) *In making its award, the Court shall not be restricted to the specific relief claimed by the parties or to the demands made by the parties in the course of the trade dispute or in the matter of the reference to it under subsection 20(3) but may include in the award any matter or thing which it thinks necessary or expedient for the purpose of settling the trade dispute or the reference to it under subsection 20(3).*
(emphasis added)

- [16]** In deciding a trade dispute regarding a CA: A
- (i) the IC may take into account the following considerations:
 - (a) the matters enumerated in ss. 13(2A)(a) to (c), 30(4) and (5A) of the IRA; B
 - (b) any relevant matter which has been adduced as evidence by the parties in the IC; and C
 - (c) as provided in s. 30(6) of the IRA, even if a matter has not been tendered as evidence in the IC by the parties, the IC may nevertheless consider such matter if the IC is of the view that such matter is “necessary or expedient for the purpose of settling the trade dispute or the reference to it under sub-s. 20(3) IRA” (relevant considerations); D
 - (ii) a relevant consideration is not a mandatory rule of law which has binding legal effect. The IC is only duty-bound to take into account the relevant considerations; E
 - (iii) the IC has a discretion to:
 - (a) to accept or reject any relevant consideration; and
 - (b) attach any weight to any relevant consideration. F

Needless to say, the IC should give reasons for the exercise of the above discretion;
 - (iv) in deciding a trade dispute in respect of a CA, by virtue of s. 30(5) of the IRA, the IC “shall act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal form”. Consequently, an award of IC: G
 - (a) may be based on “equity, good conscience and the substantial merits of the case without regard to technicalities and legal form” within the meaning of s. 30(5) of the IRA; and H
 - (b) does not constitute a binding legal precedent as understood in the doctrine of *stare decisis* (with regard to judgments of the superior courts); I
 - (v) the IC’s power under s. 17(2) of the IRA (to vary a CA) should be read together with ss. 13(2A)(a) to (c), 30(4), (5), (5A) and (6) of the IRA. In other words, the power of the IC pursuant to s. 17(2) of the IRA is not absolute but is subject to ss. 13(2A)(a) to (c), 30(4), (5) and (6) of the IRA. Consequently, we cannot accept the contention by the appellant’s learned counsel in this appeal that the IC has “wide powers” under s. 17(2) of the IRA; and I

- A (vi) the IC should bear in mind that IRA is a piece of beneficent social legislation – please refer to the Federal Court’s judgment in *Hoh Kiang Ngan*, at pp. 387 to 388.

Whether There Should Be Appellate Intervention Regarding The Maximum Rates

- B [17] The appellant proposed an automatic RM300 increase in the maximum rates (appellant’s automatic RM300 increase (maximum rates)) on the following grounds, among others:

- C (i) maximum rate does not mean “maximum value for the job” as adopted by the IC and the High Court. The IC in this case had erroneously relied on a passage purportedly (purported passage (*Palm Beach Hotel*)) decided in a previous award of the IC in *Palm Beach Hotel (Penang) Bhd v. National Union of Hotel, Bar & Restaurant Workers* [1988] 1 ILR 122 (*Palm Beach Hotel*). The purported passage (*Palm Beach Hotel*) could not be found in the IC’s award in *Palm Beach Hotel*;

- D (ii) the IC and High Court had erroneously imposed the burden on the appellant to justify the appellant’s automatic RM300 increase (maximum rates) by proving an increase in the value of the job done (added value (employment)). Before this case, added value (employment) was “unheard of”;

- E (iii) both the IC and High Court had failed to consider the three factors (three factors (*Penfibre*)) which had been laid down by the IC in *Penfibre Sdn Bhd, Penang v. Penang & S Prai Textile & Garment Industries Employees’ Union* [1986] 1 ILR 323 (*Penfibre*) as follows:

- F (a) the wages prevailing in comparable establishments in the same region;
- (b) any rise in the cost of living since the last revision of the wages; and
- G (c) the financial capacity of the employer to pay higher wages (employer’s financial capacity);

the three factors (*Penfibre*), the employer’s financial capacity is the “limiting factor” because any increase in salary can only be awarded within the employer’s financial capacity;

- H (iv) in compliance with the first of the three factors (*Penfibre*), the appellant had adduced as evidence (IC), three CAs (three comparable CAs) between the appellant and three employers (who are in industries which are comparable to that of the first respondent). The three comparable CAs supported the appellant’s automatic RM300 increase (maximum rates);
- I

- (v) there had been an automatic increase of RM300 (automatic RM300 increase (minimum rates)) in all the minimum rates in the salary scale of the first respondent's employees (minimum rates) pursuant to the minimum wage order 2012 (MWO). In view of the automatic RM300 increase (minimum rates), all the first respondent's employees had a "legitimate expectation" that there would be an automatic RM300 increase in the maximum rates; A
B
- (vi) the maximum rates had not been increased for the past eight years and for this period of eight years, the consumer price index (CPI) had risen by 15.20 points. Furthermore, the first respondent's factory is situated in the Klang Valley where the cost of living is higher; and C
- (vii) there were certain categories of the first respondent's employees who had enjoyed an automatic RM300 increase in their maximum rates. Consequently, the other categories of the first respondent's employees who did not enjoy an automatic RM300 increase in their maximum rates, would feel "underappreciated" and discriminated against. D
- [18]** According to the unanimous IC's decision (no increase in maximum rates):
- (i) the minimum rate represents the "minimum value for the job", namely, the entry level into the first respondent's employment (entry point (employment)); E
- (ii) the maximum rate represents the "maximum value for the job". If there is an automatic increase in the maximum rate, this means an automatic extension of the annual salary increment of the first respondent's employees; F
- (iii) there cannot be an increase in the maximum rates without any evidence of added value (employment). Reliance was placed by the IC on:
- (a) a previous award of the IC in *Palm Beach Hotel*; G
- (b) the High Court's decision in *Tri-Wall (Malaysia) Sdn Bhd v. Paper Products Manufacturing Employees' Union & Anor* [R2-25-115-2011] (unreported); and
- (c) the IC's award in *Kuala Lumpur Glass Manufacturers Co Sdn Bhd v. Non-Metallic Mineral Products Manufacturing Employees' Union* [1988] 2 ILR 93; [1988] 3 MELR 58, at 62; H
- (iv) the minimum rate concerns the entry point (employment) and cannot be equated with the maximum rate which is based on the added value (employment); I

- A (v) the appellant had failed to discharge the burden to prove any added value to the job of the first respondent's employees so as to justify an increase in the maximum rates;
- (vi) the MWO was made under the National Wages Consultative Council Act 2011 (NWCCA) after the National Wages Consultative Council (NWCC) had conducted a study under s. 21(b) of the NWCCA regarding a RM300 increase in the minimum rates. The NWCC did not conduct a study in respect of any increase in the maximum rates;
- B (vii) the three comparable CAs did not support an automatic increase of RM300 in the maximum rates; and
- C (viii) the first respondent's proposed salary scale for the 13th CA (which included the maximum rate and minimum rate), was "fair and reasonable".
- D [19] In paras. 15 to 35 of the written judgment of the High Court (High Court's written judgment), the learned High Court Judge had explained in detail why there was no ground for a judicial review of the unanimous IC's decision (no increase in maximum rates).
- [20] We are of the following view regarding the unanimous IC's decision (no increase in maximum rates):
- E (i) added value (employment) is in consonance with s. 13(2A)(c) of the IRA (performance-based remuneration system). It is therefore clear that added value (employment) is a relevant consideration which had been correctly taken into account by the IC in this case. Subsection (2A) had been inserted into s. 13 of the IRA by way of the Industrial Relations (Amendment) Act 2007 (Act A1322). Act A1322 came into effect on 28 February 2008. Cases decided before the enforcement of s. 13(2A) of the IRA, including *Penfibre*, should be read with caution;
- F (ii) added value (employment) cannot be confined to additional experience of the first respondent's employees in performing the same job over the years (job familiarisation). If added value (employment) is only limited to job familiarisation, this will not only be contrary to s. 13(2A)(c) of the IRA, but will also render nugatory that statutory provision which had been introduced by Act A1322;
- G (iii) an automatic RM300 increase (minimum rates) (by reason of the application of the MWO) does not, *ipso facto*, support the appellant's automatic RM300 increase (maximum rates). This is because the minimum rate concerns the entry point (employment), whereas the maximum rate is premised on the added value (employment). If the IC had relied on the automatic RM300 increase (minimum rates) and/or
- H the MWO to justify the appellant's automatic RM300 increase
- I

(maximum rates), the IC would have committed an error law by taking into account irrelevant matters, *ie*, the automatic RM300 increase (minimum rates) and/or the MWO;

(iv) the evidence (IC) did not support added value (employment) which could justify the appellant's automatic RM300 increase (maximum rates);

(v) if the appellant's automatic RM300 increase (maximum rates) was accepted, as a corollary, there would be an increase in the annual salary increment across the board for all the employees of the first respondent. The first respondent's financial capacity, to pay for the automatic RM300 increase in the maximum rates as well as to bear the corresponding increase in the annual salary increments, was certainly a relevant consideration which would justify a rejection of the appellant's automatic RM300 increase (maximum rates); and

(vi) in view of the above reasons supporting the unanimous IC's decision (no increase in maximum rates), the IC's erroneous citation of the purported passage (*Palm Beach Hotel*) in the award, in itself:

(a) was of no consequence in this case; and

(b) did not invalidate the unanimous IC's decision (no increase in maximum rates).

[21] In view of the reasons and evidence stated in the above para. [20], there was no ground for judicial review of the unanimous IC's decision (no increase in maximum rates) by the learned High Court Judge on the following grounds:

(i) the IC did not commit any error of law in arriving at the unanimous IC's decision (no increase in maximum rates); and

(ii) the unanimous IC's decision (no increase in maximum rates) was not an "irrational" decision which no reasonable IC would have made.

In any event, we are not persuaded that there was any error in the exercise of the High Court's discretion to refuse to grant the orders of *certiorari* and *mandamus* with regard to the unanimous IC's decision (no increase in maximum rates). We have no hesitation to dismiss this appeal in respect of the unanimous IC's decision (no increase in maximum rates).

Should There Be Appellate Intervention Regarding Annual Salary Increment?

[22] The following contentions had been advanced in support of the appellant's proposed 6% increase (annual salary increment):

(i) the appellant's proposed 6% increase (annual salary increment) was in line with the time-tested "step-based system" (step-based system).

- A When the IC adopted the added value (employment) and not the step based system, there was an “automatic devaluation” of the annual salary increment;
- (ii) the three comparable CAs had provided for fixed amounts of annual salary increments and should be followed in this case;
- B (iii) before the trade dispute regarding the 13th CA, the first respondent had adopted fixed amounts of annual salary increments for 35 years;
- (iv) the appellant’s proposed 6% increase (annual salary increment) catered for the rise in the cost of living;
- C (v) the appellant’s proposed 6% increase (annual salary increment) recognised the skill sets and work experience of the first respondent’s employees “over the years”;
- (vi) the first respondent’s employees had a “legitimate expectation” regarding the implementation of the appellant’s proposed 6% increase (annual salary increment) based on the past practice of the first respondent;
- D (vii) the appellant’s proposed 6% increase (annual salary increment) would serve as an incentive for the employees to remain in the first respondent, continue their loyal service and contribute to the first respondent’s success;
- E (viii) an annual salary increment represented the added value of the employees (in terms of their skill and experience) to the first respondent. Reliance was placed on the IC’s award in *Association Of Bank Officers, Peninsular Malaysia v. Malayan Commercial Banks Association* [1981] 1 ILR 136 (*Association Of Bank Officers’ case*); and
- F (ix) the appellant relied on a previous award of IC in *Kesatuan Pekerja-pekerja Perkilangan Perusahaan Makanan v. Nestle Manufacturing Malaysia Sdn Bhd* [2008] ILRU 0045; [2008] 2 LNS 0045 which decided that an annual salary increment was a “fixed component” in both the “profitability model” and “productivity model”. Consequently, the appellant was not required to prove “added value” which could justify an annual salary increment.
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- H [23] The reasons for the majority IC’s decision (annual salary increment) were as follows:
- (i) the first respondent’s proposal (annual salary increment) was “much more productive oriented” which contributed to the added value of how the first respondent’s employees could apply themselves to the job;
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- (ii) the majority IC's decision (annual salary increment) followed the IC's award in *Kesatuan Pekerja-pekerja Polyplastics Asia Pacific Sdn Bhd v. Polyplastics Asia Pacific Sdn Bhd* [2016] 2 ILR 159 which decided that the justification for an annual salary increment was not to meet an increase in the cost of living; and A
- (iii) the first respondent's proposal (annual salary increment) had a "reasonable parity between the employee's contribution and the reward" to the employee. B
- [24] The dissenting opinion of the employees' representative (annual salary increment) accepted the appellant's proposal (annual salary increment) due to the "past practice" of the first respondent to "motivate its employees". C
- [25] In paras. 46 to 51 of the High Court's written judgment, the learned High Court Judge decided that the majority IC's decision (annual salary increment) could not be challenged by way of judicial review.
- [26] We dismiss this appeal regarding the majority IC's decision (annual salary increment). Our reasons are as follows: D
 - (i) in accordance with s. 13(2A)(c) of the IRA, an annual salary increment should be based on added value (employment) and not on a step based system. E

As explained in the above sub-para. [20(i)], cases which have been decided prior to the enforcement of Act A1322 (which introduced s. 13(2A)(c) of the IRA), including *Association Of Bank Officers'* case, should be read with caution;
 - (ii) added value (employment) cannot be confined to job familiarisation – please refer to the above sub-para. [20(ii)]; F
 - (iii) the evidence (IC) did not support:
 - (a) the appellant's proposed 6% increase (annual salary increment); and
 - (b) the dissenting opinion of the employees' representative (annual salary increment); G
 - (iii) the past practice of the first respondent in providing for fixed amounts of annual salary increments for 35 years could not bar or estop the making of the first respondent's proposal (annual salary increment) for the purpose of the 13th CA. In the Supreme Court case of *Marlin Rajiman & Ors v. MAA Services Sdn Bhd* [1994] 2 CLJ 591; [1994] 2 MLJ 404, at 406, Eusoff Chin SCJ (as he then was) decided that by virtue of s. 30(5) of the IRA, estoppel cannot apply in proceedings in the IC; H

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- A (iv) there was no error of law committed with regard to the majority IC's decision (annual salary increment). Nor was the majority IC's decision (annual salary increment) so perverse or unreasonable which no reasonable IC would have made; and
- B (v) the appellant had failed to persuade us that the learned High Court Judge had erred in the exercise of his discretion to dismiss the JRA regarding the majority IC's decision (annual salary increment).

Whether There Should Be Appellate Intervention Regarding The Unanimous IC's Decision Of 6% Increase (Salary Adjustment)

- C [27] The appellant proposed for 8% increase in the salary adjustment (appellant's proposed 8% increase (salary adjustment)). The following grounds were advanced in support of the appellant's proposed 8% increase (salary adjustment):
- D (i) the appellant's proposed 8% increase (salary adjustment) would cater for the rise in the cost of living;
- (ii) the rate of increase in salary adjustment had been stagnant for the previous three CAs encompassing a period of nine years; and
- (iii) the first respondent is a profitable enterprise through the hard work of its employees and can afford an 8% increase in the salary adjustment.
- E [28] According to the unanimous IC's decision of 6% increase (salary adjustment):
- F (i) there was reliance on the IC's previous award in *Malayan Commercial Banks Association v. National Union Of Bank Employees* [1982] 1 ILR 246 which decided that as a general rule, an increase in salary based on an increase in the CPI, should not be less than 60% or more than 2/3 of the average increase of the CPI over the previous three years;
- G (ii) the unanimous IC's decision of 6% increase (salary adjustment) had accepted the IC's award in *Penfibre*;
- (iii) an employer should not increase salaries solely because the employer is making a profit;
- H (iv) the IC has to balance between the employees' interest and the employer's financial capacity as decided by the IC in *Malaya Agricultural Producers' Association v. National Union Of Plantation Workers* [1968-1969] MLLR 34;
- (v) the appellant's proposed 8% increase (salary adjustment) was higher than the increase in the CPI;
- I

- (vi) the appellant could not explain what “skill enhancement” could be obtained by the appellant’s proposed 8% increase (salary adjustment); A
 - (vii) the IC considered a host of non-monetary benefits granted by the first respondent to its employees (first respondent’s non-monetary benefits for employees), *eg*, cost of meals, medical benefits and insurance, which was equivalent to nearly 50 sen per month. The conferment of the first respondent’s non-monetary benefits for employees, ensured the employees had a higher disposable income; and B
 - (viii) the first respondent had provided monetary benefits to its employees in the form of overtime and other fixed monetary allowances (first respondent’s monetary benefits for employees). The first respondent’s monetary benefits for employees had been taken into account by the IC in this case. C
- [29] According to paras. 36 to 42 of the High Court’s written judgment, the learned High Court Judge explained why the unanimous IC’s decision of 6% increase (salary adjustment) could not be quashed by way of a *certiorari* order. D
- [30] We have perused the grounds for the unanimous IC’s decision of 6% increase (salary adjustment) and the High Court’s written judgment which dismissed the JRA in respect of the unanimous IC’s decision of 6% increase (salary adjustment). This appeal regarding the unanimous IC’s decision of 6% increase (salary adjustment) is dismissed on the following grounds: E
- (i) the unanimous IC’s decision of 6% increase (salary adjustment) should be considered together with the following benefits conferred by the first respondent on its employees: F
 - (a) the first respondent’s non-monetary benefits for employees; and
 - (b) the first respondent’s monetary benefits for employees;

Taking into account the above two benefits, the unanimous IC’s decision of 6% increase (salary adjustment) was fair and reasonable because: G

 - (1) the increase in CPI had been considered; and
 - (2) the higher cost of living for the first respondent’s employees in the Klang Valley had been taken into account;
 - (ii) the IC had rightly maintained a balance between the interest of the first respondent’s employees and the first respondent’s financial capacity; H
 - (iii) the IC did not commit an error of law with regard to the unanimous IC’s decision of 6% increase (salary adjustment);
 - (iv) the unanimous IC’s decision of 6% increase (salary adjustment) was not irrational in the sense that no reasonable IC would have made; and I

- A (v) there was no error in respect of the exercise of the High Court's discretion in dismissing the JRA regarding the unanimous IC's decision of 6% increase (salary adjustment).

Should There Be Appellate Intervention Regarding The Majority IC's Decision (Bonus)?

- B [31] The appellant had proposed a fixed sum of 1.8 months' bonus in the 13th CA (appellant's proposal (fixed 1.8 months' bonus)). The following grounds had been submitted in support of the appellant's proposal (fixed 1.8 months' bonus):
- C (i) both the IC and High Court had failed to consider the three comparable CAs which provided for fixed sums of two months' bonus;
- (ii) the appellant relied on the judgment of Su Geok Yiam J in *Kesatuan Eksekutif Airod v. Airod Sdn Bhd & Anor* [2016] CLJU 888; [2016] 1 LNS 888, Judicial Review Application No. 25-7-01-2015, which held that bonuses are given to employees by their employers so as to enable the employees to:
- D (a) share the employers' profits; and
- (b) encourage the employees to work harder;
- E (iii) before the 13th CA, all the CAs for the past 30 years had provided for a fixed sum of two months' bonus;
- (iv) an acceptance of the appellant's proposal (fixed 1.8 months' bonus) would mean that at the end of the year, the first respondent's employees would be able to "manage their children's school expenses and other financial commitments"; and
- F (v) the first respondent's financial performance had been strong. In fact, as at 31 January 2017, the first respondent's profit before tax was RM124,433,000, the highest in its history.
- G [32] According to the majority IC's decision (bonus):
- (i) bonus is given by the first respondent based on two considerations, namely:
- H (a) the productivity of the first respondent's employees; and
- (b) the first respondent's profitability;
- (two relevant considerations (bonus));
- (ii) premised on the two relevant considerations (bonus), the majority IC's decision (bonus) decided on the one-month fixed bonus and any other bonus exceeding the one-month fixed bonus, should be earned through
- I PLWS.

[33] The employees' representative gave a dissenting decision on bonus, namely: A

(i) a fixed sum of 1.5 months bonus (1.5 months fixed bonus) should be given; and

(ii) any other bonus exceeding the 1.5 months fixed bonus, should be earned through PLWS. B

[34] In paras. 52 to 57 of the High Court's written judgment, the learned High Court Judge explained why there could not be a judicial review of the majority IC's decision (bonus).

[35] We decide that there is no ground for appellate intervention regarding the majority IC's decision (bonus). Our reasons are as follows: C

(i) the majority IC's decision (bonus) had not erred in law by taking into account the two relevant considerations (bonus);

(ii) no error of law was committed with regard to the majority IC's decision (bonus); D

(iii) the majority IC's decision (bonus) was not so unreasonable which no reasonable IC would have made; and

(iv) no appealable error had been committed by the learned High Court Judge in refusing the JRA in respect of the majority IC's decision (bonus). E

Outcome Of This Appeal

[36] Premised on the above reasons and evidence (IC):

(i) this appeal is dismissed;

(ii) the High Court's decision is affirmed; and

(iii) the appellant shall pay to the first respondent a sum of RM10,000 as costs for this appeal (subject to allocator fee). G

[37] A draft copy of this judgment (draft) had been previously forwarded to Ravinthran Paramaguru and Faizah Jamaludin JJCA. Both my learned brother and sister had agreed with the draft.

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